ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	GN Docket No. 96-228
to Establish Part 27, the Wireless	)	
Communications Service ("WCS")	)	

To: The Commission

COMMENTS OF BELLSOUTH CORPORATION

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December 4, 1996

SUMMARY

BellSouth urges the Commission not to adopt an open-ended allocation of 2.3 GHz spectrum for the Wireless Communications Service and instead to allocate the spectrum for wireless cable and wireless data services, such as Internet access, e-mail, and similar specialized data services. The Commission has already allocated more than 200 MHz of spectrum for CMRS and has found that allocation sufficient for the purpose of general commercial mobile service for now. Wireless cable and wireless data services, on the other hand, have insufficient spectrum to respond to growing demand. The proposed 2.3 GHz band is well-suited for wireless cable service, and would enable wireless cable operators to compete with landline cable operators not only in providing video programming to consumers but also in providing two-way high-speed Internet access.

The Commission should not simply allow the WCS auctions to determine the use of this spectrum. Congress expected the Commission to make public interest determinations when it allocates spectrum, including consideration of consumer demand for particular services. If the Commission places no bounds on how a given spectrum allocation will be used, it cannot make this determination. Moreover, the Commission must determine whether the WCS licenses will be used for commercial services to subscribers before it can auction these licenses, a determination that cannot reasonably be made unless there is some meaningful limitation on the use of WCS licenses.

BellSouth urges the Commission to issue WCS licenses on a BTA basis, not on a nationwide, regional, or MTA basis. BTA licensing provides licensees maximum flexibility in designing their systems and reduces the cost of entry. BTA licensing promotes business efficiency, in that BTAs are used for wireless cable licensing. BTA licensing also promotes economic efficiency, by reducing entry barriers and avoiding the need for disaggregation and partitioning of licenses, thereby permitting licenses to go to their highest and best use swiftly.

BellSouth proposes that the Commission award licenses in two paired 6+6 MHz channel block and one paired 3+3 MHz channel block. This would maximize the utility of these licenses for wireless cable and wireless data services and would provide the greatest flexibility to use this spectrum for new services and product offerings. Paired channels will permit bi-directional transmission and will thus permit more diverse services. By carefully managing the auction (*e.g.*, using activity rules, stopping rules, and multiple bids per day), the Commission can move auctions for these licenses to a conclusion promptly, even on a BTA basis.

The Commission should apply the CMRS spectrum cap to any WCS spectrum used for CMRS, if that is an allowable use. BellSouth supports the Commission's proposal for liberal partitioning, disaggregation, franchising, and leasing of WCS spectrum. In this connection, the Commission should apply the spectrum cap to spectrum that is "franchised" or "leased" from a licensee and attribute such spectrum to the company actually using it, just as it applies the spectrum cap to disaggregated or partitioned licenses.

Under the principle of regulatory parity, the same performance requirements should govern competing service providers. Thus, the same build-out and construction rules governing existing services, such as PCS, GWCS, and wireless cable, should be applied to WCS licensees providing similar services. If there are no build-out or construction requirements applicable to WCS, the Commission should eliminate such rules for existing services as well.

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BellSouth Corporation ("BellSouth"), by its attorneys, hereby submits these comments in response to the Commission's *Notice of Proposed Rule Making*, GN Docket No. 96-228, FCC 96-441 (released Nov. 12, 1996) ("*NPRM*"), *summarized*, 61 Fed. Reg. 59,048 (Nov. 20, 1996). The *NPRM* requested comment on proposed regulations to create a new Wireless Communications Service ("WCS") in the 2.3 GHz band pursuant to the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009, § 3001 (1996). ("Appropriations Act").

DISCUSSION

The Appropriations Act directed the Commission to auction 30 MHz of spectrum in the 2305-2320 and 2345-2360 MHz bands (hereinafter the 2.3 GHz band) to "wireless services that are consistent with international agreements concerning spectrum allocations."[1] The only conditions placed upon the Commission in making these frequencies available for competitive bidding is that the Commission shall: (1) seek to promote the most efficient use of the spectrum; and (2) take into account the needs of public safety radio services.[2]

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1 Appropriations Act, § 3001(a).

2 Appropriations Act, § 3001(b).

As discussed herein, BellSouth opposes the complete flexible use proposed by the Commission for the new wireless spectrum and believes that the Commission should not simply allow the WCS auction to govern the use of the spectrum. Instead, BellSouth supports adoption of service limitations for WCS licenses and encourages the adoption of rules utilizing the new spectrum for wireless cable and wireless data services, including Internet access and e-mail and other specialized uses. In order to achieve the flexibility desired by the Commission, BellSouth suggests that WCS licenses be awarded on a BTA basis in two paired 6+6 MHz and one paired 3+3 MHz blocks, and that licensees be permitted to disaggregate spectrum or partition service areas. These actions will allow multiple investors—including small and rural businesses and businesses owned by women and minorities—to participate in the WCS auctions and to develop the most innovative product and service offerings.

I. THE 2.3 GHz SPECTRUM SHOULD BE ALLOCATED FOR SERVICES SUCH AS WIRELESS CABLE AND WIRELESS DATA, INCLUDING INTERNET ACCESS, E-MAIL, AND OTHER SPECIALIZED SERVICES

The Commission has proposed to allow WCS licensees to use spectrum in the 2.3 GHz band to provide "any . . . fixed, mobile, radiolocation, and broadcasting-satellite services" consistent with the international frequency allocations for these bands.[3] The Commission stated that it believes that "permitting . . . flexibility in service offerings for WCS will foster the provision and mix of WCS services most desired by the public."[4] The Commission has specifically requested comment on whether some portion of the WCS spectrum should be allocated to meet the needs of public safety providers, and more generally whether the WCS spectrum should be used for CMRS services.[5] In

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3 *NPRM* at ¶ 9.

4 *NPRM* at ¶ 9.

5 *See NPRM* at ¶¶ 21, 25-26.

this regard, the Commission stated that it will "presume that a WCS licensee is providing a CMRS service, which we believe will be a likely use of this spectrum."[6]

BellSouth does not believe that the public interest is best served by the completely flexible use policy proposed by the Commission for the 30 MHz of new wireless spectrum in the 2.3 GHz band. Rather, it is in the public interest that this spectrum be made available for a variety of "specialized services" that currently lack access to sufficient spectrum. Specifically, BellSouth supports the allocation of the new spectrum for services such as wireless cable and wireless data, including Internet access and e-mail (both commercial and for schools, libraries, and hospitals), as well as other specialized data services. Allocating additional spectrum specifically for these specialized services will allow them to flourish in response to the demands of the marketplace.

While there are currently frequency bands that can be used for these services, additional spectrum is needed to accommodate expected growth so that they can meet their full potential. The new wireless spectrum is particularly well-suited for the delivery of wireless cable services, including two-way wireless Internet access. The addition of this spectrum would enable wireless cable operators to offer a more robust package of services in terms of the total number of video channels and new two-way video and data services. This, in turn, would increase the overall competitive value and availability of wireless cable services as an alternative choice to those video and data services offered by incumbent cable operators.[7]

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[6] *NPRM* at ¶ 32.

[7] Wireless cable system operators today face a pressing need for spectrum that can be used by viewers for two-way (return path) communications. Although the Commission has already allocated a small amount of spectrum in the 2686-2690 MHz band for use by wireless cable operators, use of this spectrum has been limited for technological reasons because it is directly adjacent to a channel used for the transmission of programming to consumers.

Since adoption of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act"),[8] it has been the express policy of Congress to rely on fostering a more competitive video marketplace, to the maximum extent feasible, in order to promote the availability of diverse views and information though multiple video distribution channels.[9] Facilitating the use of this new spectrum for wireless cable services will clearly advance this important national public policy objective. WCS spectrum will thus provide an ideal opportunity to satisfy consumer demands for higher speed data links for home, business and educational use, especially via improved Internet access. Moreover, the frequency bands available for wireless data services (*i.e.*, the licensed and unlicensed PCS bands and the 902-928 MHz spread spectrum band) have substantial limits on their usefulness for wireless data, given the many other purposes for which these bands are, or will be, used.

The Commission should not simply allow the WCS auction to govern the use of the spectrum. Congress did not intend auctions to replace the public interest determinations on which spectrum allocations are based, and it expected the Commission to "consider consumer demand for spectrum-based services" in making allocation decisions.[10] Accordingly, the Commission cannot ascertain whether a particular use of radio spectrum is in the public interest unless it considers the particular type of services that are likely to be provided.[11] Under the Communications Act, the Commission must ensure that use of radio spectrum will serve the public interest, convenience, and necessity.[12] In interpreting the public interest standard, the Supreme Court has held that the

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[8] Pub. L. No. 102-385, 106 Stat. 1460 (1992).

[9] *See id.*, § 2(b), 47 U.S.C. § 521 note.

[10] 47 U.S.C. § 309(j)(7)(C); *see generally* 47 U.S.C. § 309(j)(7); H.R. Conf. Rep. No. 213, 103d Cong. 485-86 (1993), *reprinted in* 1993 U.S.C.C.A.N. 1174-75.

[11] *See* Tara S. Becht, Comment, *The General Wireless Communications Service: FCC Spectrum Traffic Cop or Broker?*, 4 CommLaw Conspectus 95, 102 (1996)

[12] *See, e.g.*, 47 U.S.C. § 303(a)-(c), (g), (r) (requiring the Commission to regulate radio as the public convenience, interest, or necessity requires); 47 U.S.C. § 307(a) (requiring the Commission

Commission must consider the "nature of radio transmission and reception, by the scope, character, and quality of services."[13] Thus, the Commission is obligated to make particularized determinations of the services that are to be offered within a specific frequency band as part of its public interest determination in an allocation proceeding. If the Commission were to make an allocation without such service-based determinations of the public interest, it would be impermissibly delegating its control of the radio spectrum to the private sector.[14] Moreover, before the Commission may auction licenses, it is obligated by Section 309(j)(2) to determine that the "particular use" of the licenses to be auctioned will be for the provision of commercial service to subscribers.[15] In the absence of any meaningful limitation on the services to be offered in the WCS, the Commission cannot make a reasoned determination that the WCS spectrum will be used to provide commercial service to subscribers, and it cannot, accordingly, utilize competitive bidding for awarding licenses.[16]

For these reasons, BellSouth urges the Commission to allocate WCS spectrum for particular, defined services, rather than the open-ended allocation proposed in the *NPRM*. There is presently no reason to allocate this spectrum for the further provision of CMRS, when more than 205 MHz of spectrum has already been allocated to CMRS[17] and there has been no showing of need for more CMRS spectrum. In fact, the Commission just recently stated that "the recent allocation of 120 megahertz of spectrum at 2 GHz for general mobile services in the form of broadband PCS is

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to grant radio licenses that serve the public convenience, interest, or necessity).

13 *National Broadcasting Co. v. United States*, 319 U.S. 190, 216 (1943).

14 *See* Becht, *supra*, at 101-103 (arguing that the Commission's creation of the General Wireless Communications Service ("GWCS"), which allows licensees to use radio spectrum flexibly, constituted an impermissible delegation of authority over radio spectrum to the private sector).

15 47 U.S.C. § 309(j)(2).

16 In fact, manufacturers may delay their development of equipment for use on the 2.3 GHz band because consumer demand for such equipment will remain largely unknown until after licenses are awarded and planned spectrum uses are announced.

17 *See Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Third Report and Order*, 9 F.C.C.R. 7988, 8108 (1994).

sufficient to satisfy the needs of general mobile service providers in this frequency range at this time."[18] BellSouth agrees, and there is, accordingly, no reasoned basis for making the 2.3 GHz band available to CMRS.

II. WCS LICENSES SHOULD BE GRANTED ON A BTA BASIS

The Commission has requested comment on the appropriate size for WCS licenses.[19] BellSouth supports the awarding of WCS licenses on the basis of Basic Trading Areas ("BTAs") as defined for broadband PCS and wireless cable. As is the case with broadband PCS and wireless cable, the use of BTA service areas for WCS will provide economies of scale and scope necessary for the development of low cost equipment and the participation of a wide variety of applicants.[20] Alternatively, the Commission has requested comment on whether WCS should be licensed on a nationwide, regional or MTA basis.[21] For the reasons discussed below, BellSouth opposes the awarding of WCS licenses on a nationwide, regional, or MTA basis.

For reasons similar to those expressed in its wireless cable proceeding,[22] licensing WCS service areas on a BTA basis will satisfy the Appropriations Act's mandate that the Commission promote "the most efficient use"[23] of the WCS spectrum. BTAs provide sufficiently large service areas to allow applicants flexibility in designing a system to maximize population coverage and take

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18 *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94-32, *First Report and Order and Second Notice of Proposed Rule Making*, 10 F.C.C.R. 4769, 4781 (1995).

19 *NPRM* at ¶ 10.

20 *See Amendment of Parts 21 and 24 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, MM Docket No. 94-131, *Report and Order*, 10 F.C.C.R. 9589, 9591, 9604-05 (1995); *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Second Report and Order*, 8 F.C.C.R. 7700, 7733 (1993).

21 *NPRM* at ¶ 10.

22 *Multipoint Distribution Service*, MM Docket No. 94-131, *Report and Order*, 10 F.C.C.R. 9589, 9605 (1995).

23 Appropriations Act, § 3001(b)(1).

advantage of economies of scale necessary to support a successful operation. Yet BTAs are also generally small enough to reduce the initial cost of acquiring an authorization through competitive bidding, and therefore providing greater opportunity for participation by small businesses, female and minority entrepreneurs and rural telephone companies. Accordingly, the use of BTAs will encourage further participation by a wide variety of applicants.[24] Finally, BTAs provide a manageable number of discrete filing areas for competitive bidding purposes.

BTA licensing will promote both business and economic efficiencies. It will be efficient from a business standpoint because BTAs are used for wireless cable licenses. Licensing additional spectrum on the same geographical basis will permit the WCS spectrum to be used in a manner consistent with an existing business plan. For example, an wireless cable licensee in a given BTA may have a substantial need for additional video channels within its BTA in order to provide customers with a variety of programs, while it has no need for video channels in an adjacent BTA, where it has no existing business operation. Thus, existing BTA licensees hoping to compete in a given BTA may be willing to bid for a BTA license, but would not value an MTA license as highly.

From an overall economic standpoint, BTA licensing will promote efficient use of spectrum because it will allow spectrum to be used by those who value it most highly without the unnecessary entry barriers posed by larger-area licensing or the inefficiencies inherent in disaggregation or partitioning of licenses. It is much easier, and less risky, for a company to acquire two or more BTAs and aggregate them together in accordance with a business plan for the particular BTAs than to acquire an MTA, regional, or nationwide license and disaggregate or partition off the parts that are not part of the company's plan. In other words, BTA licensing results in an immediate outcome that is closer to the demands of the marketplace than licensing on the basis of other, larger units. The Commission has considerable experience with the fact that auctions of geographically small

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[24] *See* 47 U.S.C. § 307(j)(4)(C).

licenses result in immediate aggregation in response to market demands, while there is little evidence that disaggregation or partitioning works well.[25]

Moreover, the FCC has previously considered and rejected nationwide service territories in the broadband PCS context as contrary to the public interest because they would limit the variety of services and providers.[26] The same policy is applicable in the WCS context. A nationwide allocation is also contrary to the goal of affording opportunities for small businesses, which would likely be unable to obtain the financing necessary to obtain a nationwide license and build out a system on a nationwide basis. Finally, a nationwide license territory would contravene the FCC's goals of competition and diversity of service as it would restrict participation to a few service providers.

III. WCS LICENSES SHOULD BE AWARDED IN TWO PAIRED 6+6 MHz BLOCKS AND ONE PAIRED 3+3 MHz BLOCK

The Commission has also requested comment on the appropriate amount of spectrum to be provided for each WCS license and whether the spectrum should be assigned on a paired or unpaired basis.[27] Interested parties were requested to consider the Appropriations Act's expedited time frames for auctioning licensing in proposing spectrum options for WCS. For example, the Commission noted that a licensing plan of six 5 MHz licenses for 51 MTA-like service areas would entail the auctioning of 306 licenses. Because of the Commission's concern about completing the WCS auctions on a timely basis, it stated that it "generally will not entertain proposals that would require the auctioning of more than 306 WCS licenses."[28]

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[25] In many of the auctions to date, companies have submitted winning bids for geographic clusters of licenses, indicating that the use of small geographic areas permits aggregation during the auction process. There has been very little partitioning of geographic areas to date, however.

[26] *See Amendment of the Commission's Rules to Establish New Personal Communications Services*, GN Docket No. 90-314, *Second Report and Order*, 8 F.C.C.R. 7700, 7729-33 (1993).

[27] *NPRM* at ¶¶ 11-12.

[28] *NPRM* at ¶ 13 & n.27.

BellSouth believes that the most suitable amount of spectrum to be provided for each WCS license is four blocks of 6 MHz spectrum and two blocks of 3 MHz spectrum, all of which would be paired. In particular, the allocation of four 6 MHz blocks would maximize the utility of this spectrum for wireless cable service, while 3 MHz blocks will be useful for a variety of data services and/or public safety. Moreover, this division of the spectrum will result in smaller bidding blocks, which can be aggregated for the most efficient size for a given technology. In addition, smaller bidding blocks will also provide for the maximum number of investors to have the most flexibility to develop new services and product offerings.[29]

Specifically, BellSouth proposes that the Commission adopt the following allocation plan. This plan requires that the spectrum be auctioned as "paired" licenses for both bands and split such that each 15 MHz band contains a single 3 MHz channel half (at the low end) and two 6 MHz channel halves. The plan is as follows:

Pairing/ Frequency (MHz)	Channel Bandwidth	Possible Use and Direction (Upstream/Downstream)
P1/ 2305-2308	3 MHz	Data ⇑
P2/ 2308-2314	6 MHz	Data ⇑, Video ⇓
P3/ 2314-2320	6 MHz	Data ⇑, Video ⇓
P1/ 2345-2348	3 MHz	Data ⇓
P2/ 2348-2354	6 MHz	Data ⇓, Video ⇓
P3/ 2354-2360	6 MHz	Data ⇓, Video ⇓

[29] The Commission noted in the GWCS proceeding that the auctioning of non-nationwide 5 MHz licenses "allows more opportunities for designated entities to obtain licenses, and at a lower cost for each license." *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94-32, *Second Report and Order*, 11 F.C.C.R. 624, 648 (1995).

The use of paired channels allows bi-directional transmission from both a hub and subscriber. In addition, this band plan looks most favorable in light of existing actions taken by the Commission in specifying that (1) out-of-band emissions must be greater than 70 dB down at 2300 MHz; and (2) output power limitations must be less than 1 Watt in the frequency range 2300-2310 MHz (as stated in the *NPRM* at page 5, note 13). Under these constraints, the first 6 MHz channel will not be useful for video program delivery, since it would overlap into the power output limitation in the 2300-2310 MHz band. However, as specified in Section F of the *NPRM,* an ERP of 2000 Watts is requested, which appears to conflict with the previously stated power limitation. If the 2000 Watt limit is granted, then the 2308-2314 MHz channel could be used for video delivery, for a total of four 6 MHz channels.

For pure data delivery, the 6 MHz channels could be split into two 3 MHz channels each, for a total of ten 3 MHz data channels (5 upstream and 5 downstream), which would comply with the current FCC restrictions on power and out-of-band emissions, if the lower-powered subscriber equipment transmits upstream on the lower group of channels. Allowing license holders to split one or more of the 6 MHz channels into multiple 3 MHz channels would allow for higher density subscribership due to the ability to mitigate interference by using both frequency division and cross-polarization techniques from adjacent transmit/receive sectors. Currently available technologies can support this type of architecture.

The fact that this allocation scheme would result in a larger number of licenses than would be the case under other alternatives should not deter the Commission. The Commission has demonstrated its ability to conduct simultaneous multi-round auctions for large numbers of licenses, and the Commission has the ability to move such auctions along to a swift conclusion. Specifically, the Commission can expedite the auctions by employing a combination of activity rules, stopping

rules, and multiple bidding rounds per day, similar to what it is doing right now for the D, E, and F Block PCS auctions.

IV. THE CMRS SPECTRUM CAP SHOULD APPLY TO ANY WCS SPECTRUM USED FOR CMRS

To the extent that WCS spectrum is used to provide CMRS, the Commission has asked for comment on whether that spectrum should be counted towards the 45 MHz CMRS spectrum cap.[30] As discussed above, BellSouth believes that the new wireless spectrum should not be allocated for CMRS use, and therefore the CMRS spectrum cap should not apply. If, however, the Commission determines to make all or part of the available 30 MHz of new wireless spectrum available for CMRS, then the spectrum cap must apply to any spectrum in the 2.3 GHz band that is used for CMRS in order to ensure that CMRS spectrum is not excessively concentrated, thereby deterring competition.

BellSouth urges the Commission to address the issue of how WCS spectrum that is "franchised" will be treated, for purposes of its CMRS spectrum cap. In paragraph 29 of the *NPRM*, the Commission tentatively concludes that there is no need for limitation on franchising arrangements, but the *NPRM* does not address how this relates to the spectrum cap. A carrier that has 45 MHz of attributable spectrum should not be permitted to evade the spectrum cap by "leasing" additional spectrum that it is not otherwise permitted to use. While the franchisee of the leased spectrum may not have "ultimate control and responsibility" for the operation of the facilities used on the leased spectrum, it will be using that spectrum as part of a service offering that competes with other CMRS providers. By leasing that spectrum from the licensee, the franchisee is effectively

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[30] *NPRM* at ¶ 25. The CMRS spectrum cap mandates that "[n]o licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular and SMR spectrum regulated as CMRS with significant overlap in any geographic area." *See* 47 C.F.R. § 20.6(a); see also Broadband PCS Competitive Bidding,, WT Docket No. 96-59, *Report and Order*, 61 Fed. Reg. 33,859 (July 1, 1996) (maintaining the 45 MHz CMRS cap) .

aggregating that spectrum together with its existing spectrum in excess of the 45 MHz cap. Such a company would, as a result, be able to employ over 45 MHz of spectrum in offering CMRS to the consuming public. The leased spectrum can be used for the franchisee's service and not for any other competitor's service. This has the same adverse effect on competition as holding a direct license for the spectrum. Accordingly, BellSouth urges the Commission to make clear that spectrum that is leased pursuant to a franchise arrangement will be deemed attributable to the franchisee for purposes of the spectrum cap, just as spectrum is attributable to a system manager in the case of a management agreement,[31] even if the franchisee does not have "control" of that spectrum for other purposes.

V. THERE SHOULD BE UNIFORM BUILD-OUT REQUIREMENTS FOR SIMILAR SERVICES (*E.G.*, PCS, GWCS, AND WIRELESS CABLE)

Under the Communications Act, the Commission is required to implement safeguards to ensure the provision of service to rural areas, prevent the warehousing of spectrum and promote investment in and deployment of new services and technologies.[32] The Commission has previously satisfied these requirements by establishing build-out (construction) requirements. For example, cellular carriers in the top 90 cellular markets were given five years to fill in their CGSA and were required to cover 75 percent of the CGSA within three years.[33] Likewise, 30 MHz broadband PCS and GWCS licensees must provide service to one-third of the population in the area which they are licensed to serve within five years of being licensed, and to two-thirds within ten years of being licensed.[34] Wireless cable licensees have a five-year period to build out their systems, and must

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31 *See* 47 C.F.R. § 20.6(d)(9).

32 *See* 47 U.S.C. § 309(j)(4)(b).

33 *See* 47 C.F.R. § 22.43(c)(1) (1994). Cellular licensees in areas other than the top 90 markets were subject to shorter construction periods. *See* 47 C.F.R. § 22.43(c)(2) (1994).

34 *See* 47 C.F.R. §§ 24.203(a), 26.104(a); *see also Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94-32, *Second Report and Order*, 11 F.C.C.R. 624, 669-670 (1995); *Implementation of Section 309(j) of the Communications Act —*

reach two-thirds of the population within their BTA service area within this time.[35] The Commission has now requested comment on whether specific construction requirements are needed for WCS licensing.[36]

BellSouth believes that performance requirements should be uniform across services. Therefore, existing build-out or construction rules for similar services—such as broadband PCS, GWCS, and wireless cable—should be applied to WCS. In other words, if WCS spectrum is used for wireless cable type services, then wireless cable build-out rules should apply. Likewise, if the spectrum is used for CMRS, the PCS build-out rules should apply. Regulatory parity for similar services requires the imposition of build-out requirements on WCS licensees providing services similar to those for which build-out rules are already in place.[37] If WCS is to be used with *no* build-out requirements, then the Commission's rules must be revised to eliminate performance deadlines for all other competing services.

VI. WCS LICENSEES SHOULD BE PERMITTED TO PARTITION SERVICE AREAS, DISAGGREGATE SPECTRUM, AND FRANCHISE OR LEASE PORTIONS OF THE SPECTRUM

Finally, the Commission has proposed to permit WCS licensees to partition their service areas into smaller geographic service areas and to disaggregate their spectrum into smaller blocks.[38] The Commission has also proposed to allow WCS licensees to franchise portions of their spectrum

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Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 F.C.C.R. 5532, 5570 (1994).

35 47 C.F.R. § 21.930.

36 *See NPRM* at ¶ 61.

37 In amending Section 332(c) of the Communications Act governing the regulatory treatment of mobile services, Congress was driven by the goal that equivalent mobile services be regulated in the same manner. *See* H.R. Conf. Rep. No. 213, 103d Cong. 492-94 (1993); H.R. Rep. No. 111, 103d Cong. 259-60, 262 (1993).

38 *NPRM* at ¶ 28.

and geographic service areas on a leased basis, although the WCS licensee would ultimately be responsible for meeting interference and other licensing requirements.[39]

Within the service limits described in Section I above, BellSouth supports the Commission's proposals and agrees that allowing WCS licensees to partition their service areas and disaggregate their spectrum will promote the most efficient use of the WCS spectrum.[40] Moreover, such an approach would encourage greater participation by small and rural businesses, and businesses owned by women and minorities, in the provision of WCS, since the creation of smaller licenses would require a smaller capital investment by potential licensees.[41] Such entities might not otherwise have the resources to successfully participate in spectrum auctions. Partitioning may also provide an additional funding source to allow WCS licensees to more quickly provide service to the public or provide the latest in technical advancements.

Similarly, BellSouth supports the Commission's proposal to permit the leasing or franchising of spectrum, subject to licensee control requirements. Any lessees or franchisees should, however, be attributed with the spectrum they obtain the rights to use, just as the acquirer of disaggregated spectrum or a partitioned service area would be attributed with the spectrum acquired.

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39 *NPRM* at ¶¶ 16, 29.

40 *See NPRM* at ¶ 27.

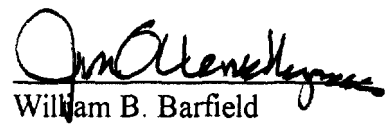
41 *See Geographic Partitioning and Spectrum Disaggregation by CMRS Licensees; Implementation of Section 257 of the Communications Act — Elimination of Market Entry Barriers*, WT Docket No. 96-148, *Notice of Proposed Rule Making*, 11 F.C.C.R. 10,187, 10,195-97 (1996) ("*Geographic Partitioning and Spectrum Disaggregation NPRM*"); *see also* 47 U.S.C. § 309(j)(3)(B).

CONCLUSION

For the foregoing reasons, BellSouth urges the Commission adopt the policies expressed herein.

Respectfully submitted,

BELLSOUTH CORPORATION

By: 

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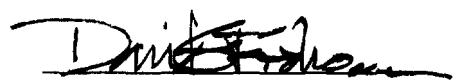
By: 

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CERTIFICATE OF SERVICE

I, Phyllis Martin, do hereby certify that I have, on this 4th day of December, 1996, served via hand delivery a copy of the foregoing BellSouth Comments in GN Docket No. 96-228 upon the following:

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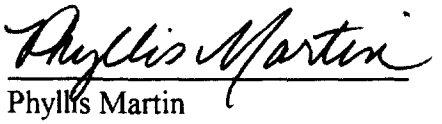

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